

Amendment No. 2
to
Contract No. PS190000004
For
GeoKNX
Between
Marshall and Associates, Inc.
and the
City of Austin

1.0 The Contract is hereby amended as follows: Change the vendor information as requested and documented by the vendor.

	From	То
Vendor Name Marshall and Associates, Inc.		PreCise MRM, LLC
Vendor Code MAR8303725		V00000974126
FEIN		

2.0 All other terms and conditions of the Contract remain unchanged and in full force and effect.

BY THE SIGNATURE affixed below, this Amendment No. 2 is hereby incorporated into and made a part of the Contract.

Digita y signed by Line

Linell Goodin-Brown
Goodin-Brown
Date: 2021.05.11 10:04:08 -05 00

Linell Goodin-Brown
Procuement Supervisor
City of Austin, Purchasing Office

Date			



Amendment No. 1
to
Contract No. MA 2200 PS190000004
for
GeoKNX
between
Marshall and Associates, Inc.
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be effective April 08, 2020 to April 07, 2021. Four options will remain.
- 2.0 The total contract amount is not increased by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount	
Initial Term:			
04/08/2019 – 04/07/2020	\$22,000.00	\$22,000.00	
Amendment No. 1: Option 1 – Extension			
04/08/2020 - 04/07/2021	\$0.00	\$22,000.00	

- 3.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: JAMES T HOWARI

Jim Howard Procurement Manager City of Austin Purchasing Office 124 West 8<sup>th</sup> Street Austin, Texas 78701 Digitally signed by JAMES T HOWARD
DN: cn=JAMES T HOWARD, o=CITY OF AUSTIN,
- OU=FINANCE,
- email=JIM.HOWARD@AUSTINTEXAS.GOV, c=US

Date: 2020.03.26 17:10:14 -05'00'

#### **CONTRACT BETWEEN THE CITY OF AUSTIN**

AND

Marshall and Assoc. Inc.

For GeoKNX

Contract Number: MA 2200 PS190000004

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Marshall and Assoc. Inc. ("Contractor"), having offices at 2915 N. Cole Road, Boise, ID 83704.

#### **SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

- 1.1 <u>Engagement of the Contractor</u>. Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.
- 1.3 **Responsibilities of the City**. The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

#### **SECTION 2. SCOPE OF WORK**

2.1 <u>Contractor's Obligations</u>. The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

#### **SECTION 3. COMPENSATION**

3.1 <u>Contract Amount</u>. The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$22,000.00 for all fees and expenses.

#### 3.2 Invoices.

3.2.1 Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department. Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Austin Water Utility
Attn:	Accounts Payable
Address	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and

grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

- 3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- 3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

#### 3.3 Payment.

- 3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.
- 3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.
- 3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
  - 3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;
  - 3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
  - 3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
  - 3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
  - 3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
  - 3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
  - 3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.
- 3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- 3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.
- 3.4 <u>Non-Appropriation</u>. The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.
- 3.5 **Reimbursable Expenses**. Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.
  - 3.5.1 <u>Administrative</u>. The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.
  - 3.5.2 <u>Travel Expenses</u>. All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed

against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

http://www.gsa.gov/portal/category/21287

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

#### 3.6 Final Payment and Close-Out.

- 3.6.1 The making and acceptance of final payment will constitute:
  - 3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
  - 3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

#### **SECTION 4. TERM AND TERMINATION**

- 4.1 <u>Term of Contract</u>. The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 60 months. Prices are firm fixed in this Contract for a period of 60 months.
- 4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
- 4.3 <u>Default.</u> The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.
- Termination For Cause. In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
- 4.5 <u>Termination Without Cause</u>. The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise

legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 <u>Fraud.</u> Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

#### **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance**: The following insurance requirements apply.

#### 5.1.1 General Requirements.

- 5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.
- 5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.
- 5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- 5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- 5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- 5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- 5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office P. O. Box 1088 Austin, Texas 78767

OR

#### PURInsuranceCompliance@austintexas.gov

- 5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- 5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- 5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or

exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

- 5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- 5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- 5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- 5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- 5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.
  - 5.1.2.1 <u>Commercial General Liability Insurance</u>. The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.
    - 5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
    - 5.1.2.1.2 Contractor/Subcontracted Work.
    - 5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.
    - 5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.
    - 5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.
    - 5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.
  - 5.1.2.2 <u>Business Automobile Liability Insurance</u>. The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:
    - 5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.
    - 5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.
    - 5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

- 5.1.2.3 Worker's Compensation and Employers' Liability Insurance. Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:
  - 5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.
  - 5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.
  - 5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

#### 5.1.2.4 **Professional Liability Insurance.**

- 5.1.2.4.1 The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.
- 5.1.2.4.2 If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.
- 5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

#### 5.2 **Delays.**

- 5.2.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- 5.2.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

#### **SECTION 6. WARRANTIES**

#### 6.1 Warranty - Price.

- 6.1.1 The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.1.2 The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

- 6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.
- 6.2 <u>Warranty Services</u>. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
  - 6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
  - 6.2.2 Unless otherwise specified in the Contract, the warranty period shall be <u>at least</u> one year from the acceptance date. If during the warranty period, one or more of the warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
  - 6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

#### **SECTION 7. MISCELLANEOUS**

#### 7.1 Audits and Records.

7.1.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

#### 7.1.2 Records Retention:

- 7.1.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contactor's internal administration.
- 7.1.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.
- 7.1.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.
- 7.2 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

#### 7.3 **Indemnity**.

#### 7.3.1 Definitions:

- 7.3.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
  - 7.3.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;
  - 7.3.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- 7.3.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- 7.3.2 THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.
- 7.4 <u>Claims</u>. If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
- 7.5 <u>Notices.</u> Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City: To the Contractor:

City of Austin, Purchasing Office MarshallGIS,

ATTN: CA's Name, Contract Administrator ATTN: Elizabeth Marshall, Contract Manager

P O Box 1088 2915 N Cole Rd Austin, TX 78767 Boise, ID 83704

7.6 **Confidentiality.** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly

notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- 7.7 **Advertising.** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
- 7.8 **No Contingent Fees.** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
- 7.9 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
- 7.10 **Prohibition Against Personal Interest in Contracts.** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
- 7.11 <u>Independent Contractor</u>. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
- 7.12 **Assignment-Delegation**. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
- 7.13 <u>Waiver</u>. No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
- 7.14 <u>Modifications</u>. The Contract can be modified or amended only in writing signed by both parties. No preprinted or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
- 7.15 <u>Interpretation</u>. The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined

by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

#### 7.16 **Dispute Resolution.**

- 7.16.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- 7.16.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

#### 7.17 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

- 7.17.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.
- 7.17.2 The City of Austin has determined that no goals are appropriate for this Contract. Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.
- 7.17.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

#### 7.18 **Subcontractors**.

7.18.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and

Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

- 7.18.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
  - 7.18.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.
  - 7.18.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
  - 7.18.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
  - 7.18.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
  - 7.18.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- 7.18.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- 7.18.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
- 7.19 <u>Jurisdiction And Venue</u>. The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
- 7.20 <u>Invalidity</u>. The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
- 7.21 **Holidays**. The following holidays are observed by the City:

Holiday	Date Observed
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January

President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

- 7.22 <u>Survivability of Obligations</u>. All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.
- 7.23 Non-Suspension or Debarment Certification. The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 7.24 <u>Incorporation of Documents.</u> Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: https://assets.austintexas.gov/purchase/downloads/standard\_purchase\_definitions.pdf
- 7.25 <u>Order of Precedence</u>. The Contract includes, without limitation, the Offer, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.
  - 7.25.1 this Contract
  - 7.25.2 City of Austin Standard Purchasing Terms and Conditions
  - 7.25.3 City of Austin Supplemental Purchasing Terms and Conditions
  - 7.25.4 MarshallGIS Proposal dated 1/22/19

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

MARSHALLGIS	CITX-OF AUSTIN
By: All Signature	By: / Signature
Name: Elizabeth Marshall Printed Name	Name: Dan Delkmonache Printed Name
Title: Owner / CEO	Title: Procurement Specialist III
Date: 03/28/2019	Date: 4/8/19

### **List of Exhibits**

MarshallGIS Proposal dated 1/22/19 ("Contractor's Proposal") Non Discrimination Certification, Section 0800 Master License Agreement Exhibit A

Exhibit B

Exhibit C

# EXHIBIT A City of Austin, Texas MARSHALLGIS PROPOSAL DATED 1/22/19



## Quote

Date	Quote #	
1/22/2019	20180620LV	

### City of Austin -Water Utilities 625 F. 10th St., Stc. 900 Austin, TX 78701 Attn: Steve Hutton Email: Steve.Hutton@ci.austin.tx.us

From

MarshallGIS
2915 N Cole Rd.
Boise, ID 83704
Rep: Rhett Harman
Email: RHarman@marshallgis.com

	Sales Rep	Product	Project ID	Valid for (Days)
	RJH	GenKNX Sync & T	GeoKNX Maintenance 5 Year	Net 90
Description		Qty	Cost	Total
) MAINTENANCES 1.1) GeoKNX Toolbox Maintenance (5 Seats, 2) GeoKNX Sync for Hansen Maintenance (	5 Years) 1 Seat, 5 Years)	25 5	300.00 1,400.00	7,500.00 7,000.00
CONSULTING SERVICES     Professional Consulting Services		40	187.50	7,500.00
·.			Subtotal	\$22,000.00
			Sales Tax (0.0%)	\$0.00
			Total	\$22,000.00

# EXHIBIT B City of Austin, Texas NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

#### City of Austin, Texas

#### **Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

# City of Austin Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their compliant, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

#### Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

#### Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filling. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 28th day of March, 2019

CONTRACTOR
Authorized
Signature

Title

MarshallGIS

Owner/CEO



# **Master License Agreement**

This Master License Agreement (hereinafter referred to as "Agreement") is between you ("Licensee") and Marshall and Associates, Inc., dba MarshallGIS, with its principal place of business at 2915 N. Cole Rd., Boise ID, 83704 USA, (hereinafter referred to as "MarshallGIS"). The Agreement includes and incorporates by reference (i) this signature page, (ii) Exhibit A: General License Terms and Conditions, (iii) Exhibit B: Software Scope of Use, and (iv) the accepted Software quote and related purchase orders. The parties acknowledge that they have read and understood this Agreement and agree to be bound by the terms and conditions.

Licensee may only use the type and number of copies or seats of the Software and Documentation for which the appropriate license fees have been paid to MarshallGIS and in accordance with the licensed configuration on file with MarshallGIS Customer Support.

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the last date written below.

MARSHALL AN	D ASSOCIATES, INC.	
(Mar	rshallGIS)	(Licensee)
Ву:		Ву:
Authoriz	ed Signature	Authorized Signature
Printed Name: Elizab	eth Marshall	Printed Name:
Title: CEO		Title:
Date:		Date:
	Licens	ee Contact Information
Contact:		Telephone:
Address:		Fax:
		Email:
City:		
State:	Zip:	



### **Exhibit A**

### of Master License Agreement

**General License Terms and Conditions** 

#### **ARTICLE 1 – DEFINITIONS**

As used herein, the following words, phrases, or terms in this Agreement shall have the following meanings:

- a) **Authorized Users:** those employees, agents and independent contractors of the Licensee who are authorized by the Licensee to use the Software, Services and the Documentation.
- b) Business Day: any day which is not a Saturday, Sunday or public holiday in the US.
- c) **Change of Control:** the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.
- d) **Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information.
- e) **Licensee Data:** the data collected by the Vehicle Feeds, Licensee, Authorized Users, or MarshallGIS on the Licensee's behalf for the purpose of using the Services or facilitating the Licensee's use of the Services.
- f) Normal Business Hours: [8.00 am to 6.00 pm] Mountain time, each Business Day.
- g) **Subscription Term:** defined in the Software Maintenance Agreement.
- h) **Software**: means the actual copy of all or any portion of MarshallGIS proprietary software as shown in Exhibit B, and all associated computer software code, components, dynamic link libraries (DLLs), and programs delivered on any media, including, but not limited to, online applications provided as part of the Services, virtual appliance, Platform as a Service, alpha, beta, prerelease, restricted version(s), or final commercial release provided in source, object, or executable code format(s), inclusive of backups, updates, or merged copies permitted hereunder or subsequently supplied under this Agreement.
- i) **Services**: the web or platform as a service (PaaS) services provided by MarshallGIS to the Licensee under this Agreement via <a href="www.marshallgis.com">www.marshallgis.com</a> or any website notified to the Licensee by MarshallGIS from time to time as more particularly described in the Documentation.
- j) Documentation: means all of the printed and digital materials including, but not limited to, user documentation, training documentation, or technical information and briefings supplied under this Agreement or online via <a href="https://www.marshallgis.com">www.marshallgis.com</a> or customer support portal or any other website notified to the Licensee from time to time.
- k) Software Maintenance and Services Delivery Agreement: means the agreement that defines the software maintenance and services delivery terms and payment for software and services licensed under this Agreement.
- Standard Support and Maintenance Program: means the MarshallGIS maintenance program for providing support in relation to the Services and Software as made available at <a href="www.marshallgis.com">www.marshallgis.com</a> or such other website address as may be notified to the Licensee from time to time.

#### ARTICLE 2 – INTELLECTUAL PROPERTY OWNERSHIP AND RESERVATION OF RIGHTS

The Software and Documentation are owned by MarshallGIS and/or its licensor(s) and are protected by United States laws and applicable international laws, treaties, and conventions regarding intellectual property or proprietary rights. MarshallGIS and/or its licensor(s) retain all rights, title, and ownership not granted herein to all copies of the Software and Documentation licensed under this Agreement. To the extent that any modifications are allowed under this Agreement to the Software and Documentation, such modifications shall not vest any rights, title, or interest in the Software and Documentation, including without limitation any right, title or interest

by implication or estoppel. From the date of receipt, Licensee agrees to use reasonable effort to protect the Software and Documentation from unauthorized use, reproductions, distribution, or publication.

#### **ARTICLE 3 – GRANT OF LICENSE**

#### 3.1 License

In consideration of the mutual promises and covenants provided herein and for other good and valuable consideration, and conditioned upon compliance with all of the terms and conditions set forth in the Agreement, MarshallGIS grants to Licensee a personal, nonexclusive, nontransferable license as described further in Exhibit B Software License Type and Scope of Use. In addition to Licensee a personal nonexclusive, nontransferable license to access and use any secure MarshallGIS Web site resources made available to Licensee for Licensee's internal use only, provided that Licensee follows MarshallGIS' terms of use policy specified therein. All password or controlled access information provided by MarshallGIS or its authorized distributor shall be treated as MarshallGIS Confidential Information.

#### 3.2 Beta License

In the event MarshallGIS accepts Licensee into its current Beta Testing program, Licensee may be provided copies of alpha, beta, and/or prerelease (hereinafter collectively referred to as "Beta") Software for the limited purpose of testing the Beta Software in accordance with the Beta testing policies then in effect. Licensee agrees that the terms and conditions of a separate Beta Software Licensing Agreement shall, with addition to the terms and conditions of this Article 3.2 only, supersede the terms and condition of this Agreement for use of the Beta Software. Beta Software and Documentation delivered are confidential and proprietary to MarshallGIS and contain trade secrets, inclusive of unpublished specifications. In consideration of the rights granted herein, Licensee agrees to retain all Beta Software and Documentation provided to Licensee in confidence. Licensee shall maintain all results of testing in confidence and agrees not to disclose to any third party details pertaining to the Beta Software, Documentation, test results, or errors encountered. MarshallGIS reserves the right to determine which Beta Software and Documentation for subsequent interim beta release(s) or patch(es) will be made available to Licensee to test during the term of the Agreement. Beta Software is subject to change prior to its commercial release and may never be commercially released. Licensee is advised that such Software is not suitable or licensed for full use and accepts all responsibility for use of the same and any results generated.

#### 3.3 Evaluation License

MarshallGIS may from time to time extend a limited term evaluation license(s) under the terms of this Agreement, for the duration authorized in any supporting documentation supplied by MarshallGIS. Any evaluation license subsequently converted to a full use license is also subject to the terms of this Agreement.

#### 3.4 Consultant Access

Licensee may provide access to the Software or Documentation to any consultant or contractor of Licensee, provided that the consultant or contractor is using the Software or Documentation exclusively for the benefit of Licensee. Licensee shall be responsible for compliance by consultants or contractors with the terms and conditions of this Agreement and that the consultant or contractor had entered into a Non-Disclosure Agreement with Licensee so as to protect the Confidential Information of MarshallGIS.

#### **ARTICLE 4 – SCOPE OF USE**

#### 4.1 Permitted Uses

a) Licensee may (i) install and store server, single use and/or virtual appliance licensed software copies onto electronic storage device(s) and (ii) only use the Software and Documentation as described in Exhibit B

- set forth herein and in accordance with the licensed configuration on file with MarshallGIS Customer Support or MarshallGIS authorized distributors.
- b) Licensee may make one (1) copy of the server, single use and/or virtual appliance licensed Software and Documentation for archival purposes during the term of this Agreement and Licensee may make routine computer backups of this licensed Software and implement a redundant installation for failover operations during the period the primary site is not operational. The redundant installation shall remain dormant except for system maintenance and updating of databases while the primary site is operational.
- c) Licensee may customize the Services or Software using any MarshallGIS approved customization tools, which may include a (i) macro or scripting language, (ii) open application programming interface (API), or (iii) source or object code libraries. Such modification shall be referred to as "Customized Solution." Licensee hereby grants MarshallGIS a non-exclusive, royalty-free, fully paid-up, worldwide, perpetual license to: (i) reproduce, prepare derivative works based on, and distribute all or part of any Customized Solution; and (ii) make, have made, use, offer to sell, sell, license or import any products (including software or services) under any intellectual property rights owned or licensed by Licensee which relate to all or part of any modification or methods or concepts embodied in or implemented through the execution of any Customized Solution. Licensee shall provide MarshallGIS with copies of the Customized Solution in source code form at the address supplied with the Licensed Software.
- d) Licensee may use, copy, or prepare derivative works of the Documentation supplied in digital format and thereafter reproduce, display, and redistribute the customized documentation only for the Licensee's own internal use. The portion(s) of the Documentation supplied in digital format merged with other software and printed or digital documentation shall continue to be subject to the terms and conditions of this Agreement and shall provide the following copyright attribution notice acknowledging the proprietary rights of MarshallGIS and its licensor(s) in the Documentation supplied in digital format: "Portions of this document include intellectual property of Marshall and Associates, Inc., and its licensor(s) and are used herein under license. Copyright© 2016 MARSHALL AND ASSOCIATES, INC. ALL RIGHTS RESERVED."
- e) The Licensee shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorized access or use, promptly notify MarshallGIS.

#### 4.2 Uses Not Permitted

- a) Licensee shall not sell; rent; lease; sublicense; lend; assign; time-share; or act as a service bureau or Application Service Provider (ASP) that allows third party access to the Services, Software and Documentation except as provided herein; or transfer, in whole or in part, access to prior or present versions of the Services, Software or Documentation, any updates, or Licensee's rights under this Agreement.
- b) Licensee shall not redistribute the Software developer license authorization file(s).
- c) Licensee shall not redistribute the Services or Software, in whole or in part, including, but not limited to, extensions, components, or DLLs without the prior written approval of MarshallGIS as set forth in an appropriate redistribution license agreement.
- d) Licensee shall not reverse engineer, decompile, disassemble, or otherwise reduce to human perceivable form all or any part of the Services, Software or Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction in order to protect MarshallGIS and its licensor(s) trade secrets and Confidential Information contained in the Services, Software or Documentation.

- e) Licensee shall not make any attempt to circumvent the technological measure(s) (e.g., License Manager, etc.) that controls access to or use of the Services, Software or Documentation, except to the extent that such activity is expressly permitted by applicable law notwithstanding this restriction.
- f) Licensee shall not use the Software to transfer or exchange any material where such transfer or exchange is prohibited by copyright or any other law.
- g) Licensee shall not remove or obscure any MarshallGIS or its licensor(s) patent, copyright, trademark, or proprietary rights notices contained in or affixed to the Services, Software or Documentation.
- h) Other than during a reasonable transition time during an upgrade, Licensee shall not continue to use old versions of the Services, Software or Documentation in addition to the updated versions such that Licensee exceeds the quantity of licenses granted.
- i) Licensee shall not, except to the extent expressly permitted under this Agreement attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services, Software and/or Documentation (as applicable) in any form or media or by any means; or
- j) Licensee shall not access all or any part of the Software, Services and/or Documentation in order to build a product or service which competes with the Software, Services and/or the Documentation.

#### **ARTICLE 5 – SERVICES**

#### **5.2 Services Delivery**

- a) MarshallGIS shall, during the Subscription Term, provide the Services and make available the Documentation to the Licensee on and subject to the terms of this Agreement. The Subscription Term is defined in the Software Maintenance Agreement.
- b) MarshallGIS may provide hardware components as part of the Services. GPS hardware will be replaced at no cost provided hardware does not need to be replaced due to incorrect (i) storage; (ii) installation; (iii) use; (iv) maintenance; (v) service; or (vi) repair by Licensee; or due to any form of alteration, misuse, neglect, abuse, or accident affecting the hardware.

#### 5.3 Licensee Data

- a) The Licensee shall own all rights, title and interest in and to all of the Licensee Data however, MarshallGIS reserves the right to use and to allow third parties to use anonymous location, time, speed and other information obtained from Vehicles for traffic information, journey data analysis, mapping, fleet benchmarking or other related purposes.
- b) MarshallGIS shall follow its archiving procedures for Licensee Data as set out in its Back-Up Policy available on request, as such document may be amended by MarshallGIS in its sole discretion from time to time. In the event of any loss or damage to Licensee Data, the Licensee's sole and exclusive remedy shall be for MarshallGIS to use reasonable commercial endeavors to restore the lost or damaged Licensee Data from the latest back-up of such Licensee Data maintained by MarshallGIS in accordance with the archiving procedure described in its Back-Up Policy. MarshallGIS shall not be responsible for any loss, destruction, alteration or disclosure of Licensee Data caused by any third party (except those third parties subcontracted by MarshallGIS to perform services related to Licensee Data maintenance and back-up).

#### 5.4 MarshallGIS' Obligations

- a) MarshallGIS undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- b) The undertaking at clause 5.4 (a) shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to MarshallGIS' instructions, or modification or alteration of the Services by any party other than MarshallGIS or MarshallGIS' duly authorized contractors or agents. If the Services do not conform to the foregoing undertaking, MarshallGIS will, at its expense, use all reasonable commercial endeavors to correct any such non-conformance promptly, or provide the Licensee with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Licensee's sole and exclusive remedy for any breach of the undertaking set out in clause 5.4. Notwithstanding the foregoing, MarshallGIS:
  - i. does not warrant that the Licensee's use of the Services will be uninterrupted or error-free; nor that the Services, Software, Documentation and/or the information obtained by the Licensee through the Services will meet the Licensee's requirements; and
  - ii. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Licensee acknowledges that the Services, Software, and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- c) This Agreement shall not prevent MarshallGIS from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- d) MarshallGIS warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

#### 5.5 Licensee's Obligations

The Licensee shall:

- a) provide MarshallGIS with:
  - (i) all necessary co-operation in relation to this Agreement; and
  - (ii) all necessary access to such information as may be required by MarshallGIS in order to render the Services, including but not limited to Licensee Data, security access information and configuration services;
- b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
- c) carry out all other Licensee responsibilities set out in this agreement in a timely and efficient manner. In
  the event of any delays in the Licensee's provision of such assistance as agreed by the parties, MarshallGIS
  may adjust any agreed timetable or delivery schedule as reasonably necessary;
- d) ensure that the Authorized Users use the Services, software and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorized User's breach of this Agreement;
- e) obtain and shall maintain all necessary licenses, consents, and permissions necessary for MarshallGIS, its
  contractors and agents to perform their obligations under this Agreement, including without limitation the
  Services;

- f) ensure that its network and systems comply with the relevant specifications provided by MarshallGIS from time to time; and
- g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to MarshallGIS' data centers, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Licensee's network connections or telecommunications links or caused by the internet.

#### 5.6 License, Risk of Loss, and Title Interests

MarshallGIS grants the Licensee a limited, non-transferable license to use GPS tracking unit provided to it by MarshallGIS for the purposes of the Agreement and for the Subscription Term. The Licensee assumes the risk of any loss, fire, damage, and theft of GPS tracking unit after delivery to the Licensee.

#### **ARTICLE 6 – MAINTENANCE**

Maintenance consists of Services, Software and Documentation updates and access to technical support and other benefits specified in the most current applicable MarshallGIS master Software Maintenance and Services Delivery Agreement then in force between MarshallGIS and Licensee.

#### **ARTICLE 7 – TERM AND TERMINATION**

- a) The license granted to Licensee by this Agreement shall commence upon the acceptance of this Agreement.
- b) Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:
  - i. the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
  - ii. an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
  - iii. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder; or
  - iv. a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
  - v. the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
  - vi. the other party ceases, or threatens to cease, to trade; or
- vii. there is a change of control of the other party; or
- viii. the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- c) On termination of this Agreement for any reason:
  - i. all licenses granted under this Agreement shall immediately terminate;

- ii. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- iii. MarshallGIS may destroy or otherwise dispose of any of the Subscriber Data in its possession unless MarshallGIS receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Subscriber of the then most recent back-up of the Licensee Data. MarshallGIS shall use reasonable commercial endeavors to deliver the back-up to the Licensee within 30 days of its receipt of such a written request, provided that the Licensee has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Licensee shall pay all reasonable expenses incurred by MarshallGIS in returning or disposing of Licensee Data; and
- iv. the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

#### **ARTICLE 8 – LIMITED WARRANTIES AND DISCLAIMERS**

#### 8.1 Limited Warranties

For a period of ninety (90) days from the later of the date of keycode issuance or delivery of the Services, Software and Documentation to Licensee, MarshallGIS represents and warrants that (i) the unmodified Services or Software will substantially conform to the published Documentation given a MarshallGIS approved environment for the Services or Software described in Exhibit B and (ii) the media upon which the Services, Software and Documentation is provided will be free from defects in materials and workmanship under normal use and service.

#### 8.2 General Disclaimer

EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, AND THOSE INCLUDED IN THE CONTRACT, MARSHALLGIS DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, CONDITIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES FOR NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ANY AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. MARSHALLGIS' SUPPLIERS AND LICENSORS DO NOT MAKE OR PASS ON TO YOU OR ANY THIRD PARTY ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTY OR REPRESENTATION, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTIES FOR NONINFRINGEMENT. MARSHALLGIS DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION WILL MEET LICENSEE'S NEEDS, OR THAT LICENSEE'S OPERATION OF THE SAME WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT ALL NONCOMFORMITIES CAN OR WILL BE CORRECTED.

#### 8.3 Exclusive Remedy

Licensee's exclusive remedy and MarshallGIS' entire liability for breach of the limited warranties set forth in this Article 8 shall be limited, at MarshallGIS' sole discretion, to (i) replacement of any defective media; (ii) repair, correction, or a work-around for the Services or Software subject to the MarshallGIS Customer Standard Support and Maintenance Program; or (iii) return of the license fees paid by Licensee for the Services, Software or Documentation that does not meet MarshallGIS' Limited Warranty, provided that Licensee uninstalls, removes, and destroys all copies of installed Software or Documentation, or removes access to hosted services, and executes and delivers to MarshallGIS or its distributor a Certification of Uninstallation and Destruction in a form acceptable to MarshallGIS. In no event shall Licensee's remedy include a refund, credit or discount for any implementation fees paid by Licensee that are not actual license fees paid to MarshallGIS. By way of example, such implementation fees include fees for any implementation services, including without limitation, any fees

associated with installing, training travel or otherwise preparing the Services, Software or Documentation for use by the Licensee.

#### **ARTICLE 9 – LIMITATION OF LIABILITY**

#### 9.1 Disclaimer of Certain Types of Liability

In no event shall either party or its licensor(s) be liable to Licensee for costs of procurement of substitute goods or services; lost profits; lost sales or business expenditures; investments; or commitments in connection with any business, loss of any goodwill, or for any indirect, special, incidental, or consequential damages arising out of or related to this Agreement or use of the Services, Software or Documentation, however caused, on any theory of liability, and whether or not the party or its licensor(s) has been advised of the possibility of such damage. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

#### 9.2 General Limitation of Liability

IN NO EVENT WILL MARSHALLGIS' TOTAL CUMULATIVE LIABILITY HEREUNDER, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, MISPREPRESENTATION, OR OTHERWISE, EXCEED FIVE TIMES THE AMOUNT PAID TO MARSHALLGIS BY LICENSEE FOR SERVICES, SOFTWARE AND DOCUMENTATION DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ROSE. THIS LIMITATION OF LIABILITY IS NOT APPLICABLE TO INSURANCE CLAIMS UNDER A POLICY REQUIRED BY THE CONTRACT OR CONTRACTOR'S INDEMNITY OBLIGATIONS.

#### 9.3 Applicability of Disclaimers and Limitations

Licensee agrees that the limitations of liability and disclaimers set forth in this Agreement will apply regardless of whether Licensee has accepted the Services, Software or Documentation or any other product or service delivered by MarshallGIS. The parties agree that MarshallGIS has set its prices and entered into this Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties.

#### 9.4 Applicability of Disclaimers and Limitations

SUBSCRIBER EXPRESSLY UNDERSTANDS AND AGREES THAT IT HAS NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH THE UNDERLYING WIRELESS SERVICE PROVIDER OR ITS AFFILIATES OR CONTRACTORS AND THAT SUBSCRIBER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN MARSHALLGIS AND THE UNDERLYING CARRIER. IN ADDITION, SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE UNDERLYING CARRIER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO SUBSCRIBER AND SUBSCRIBER HEREBY WAIVES ANY AND ALL CLAIMS OR DEMANDS THEREFOR.

#### **ARTICLE 10 – INFRINGEMENT INDEMNITY**

- MarshallGIS shall defend, indemnify, and hold harmless Licensee from and against any loss, liability, cost, or expense including reasonable attorneys' fees, which may be incurred by Licensee against any claims, actions, or demands by a third party alleging that the Services, Software or Documentation infringes a U.S. patent, copyright, or trademark provided:
- a) Licensee promptly notifies MarshallGIS in writing of the claims, actions, or demands thereof;

- b) MarshallGIS has sole control of the defense of any claims, actions, or demands and negotiations related to the defense, or settlement of claims, actions, or demands, including the right to select counsel;
- c) Licensee cooperates fully in the investigation and defense of the claims, actions or demands; and
- d) Licensee does not make any admission or enter any settlement or agreement with any person or party who is in any manner related to such claims, actions, or demands without the prior written consent of MarshallGIS.
- 10.2 If MarshallGIS believes that the Services, Software or Documentation is or will become the subject of an infringement claim, or in the event that use of the Services, Software or Documentation is enjoined, MarshallGIS, at its own expense, may in its sole discretion either (i) obtain the right for Licensee to continue using the Services, Software or Documentation or (ii) modify the Services, Software or Documentation to make it non-infringing while maintaining substantially similar software functionality or data/informational content. If neither of such alternatives is commercially practical, the infringing items shall be returned to MarshallGIS, or access to MarshallGIS hosted Services or Software will be removed from Licensee's users, and MarshallGIS' sole liability shall be to refund license fees paid by Licensee prorated on a twenty percent (20%) per year straight line depreciation basis over a five (5) year period from the date of delivery.
- 10.3 MarshallGIS shall have no obligation hereunder to defend Licensee or to pay any resulting costs, damages, or reasonable attorneys' fees for or with respect to any claims, actions, or demands alleging (i) infringement that arises by reason of combination of non-infringing items, however acquired, with any items not supplied by MarshallGIS; (ii) infringement to the extent arising from material alteration of the Services, Software or Documentation by anyone other than MarshallGIS, its agents, or its contractors; (iii) the direct or contributory infringement of any process patent by Licensee through the use of the Services, Software or Documentation other than a process patent that is necessarily infringed by the internal processes executed within the Software itself when the Software is executed for its intended purpose; or (iv) continued allegedly infringing activity by Licensee after it has been notified of the possible infringement.
- **10.4** THE FOREGOING IN THIS ARTICLE 10 STATES THE ENTIRE OBLIGATION OF MarshallGIS WITH RESPECT TO INFRINGEMENT OR ALLEGATION OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

#### **ARTICLE 11 – CONFIDENTIAL INFORMATION**

- 11.1 During the term of this Agreement and from then on, each party will hold in strictest reasonable confidence, and not directly or indirectly use, disclose, transfer, sell, license, publish, reproduce or otherwise reveal, any Confidential Information without the other party's written permission. Any Confidential Information acquired by either party is and remains the property of the other party. Each party will secure and protect the other's Confidential Information in a manner sufficient to prevent such disclosure and will take appropriate action by instruction or agreement with its employees or other agents who are permitted access to the Confidential Information to satisfy its obligations under this Article 11. For purposes of this Agreement, "Confidential Information" includes information of any kind whatsoever that either party may reasonably regard as confidential information, including without limitation trade secrets, technical, business, marketing, and financial information however embodied. The Confidential Information of MarshallGIS shall include all aspects of the Software or Documentation as well as any other materials developed for and/or delivered to Licensee by MarshallGIS pursuant to this Agreement.
- 11.2 Information that: (i) is or becomes publicly available through no act or omission of the party receiving the information ("Receiving Party"); (ii) is rightfully received by the Receiving Party from a third party without restriction on disclosure; (iii) is independently developed by the Receiving Party without reference to, or use of, the information; (iv) is previously rightfully known to the Receiving Party, or (v) is disclosed pursuant to law or in response to an order of a court of competent jurisdiction or government authority, for purposes of this Agreement, shall not be considered Confidential Information.

#### **ARTICLE 12 - GENERAL PROVISIONS**

#### 12.1 Export Control Regulations

Licensee expressly acknowledges and agrees that Licensee shall not export, re-export, or provide access to, or provide the Software or Documentation, in whole or in part, to (i) any country in which the United States has embargoed goods; (ii) any person on the U.S. Treasury Department's list of Specially Designated Nationals; (iii) any person or entity on the U.S. Commerce Department's Table of Denial Orders; or (iv) any person or entity where such export, re-export, or provision violates any U.S. export control law or regulation. Licensee shall not export the Software and/or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Licensee represents and warrants that it is not a national, resident, located in or under the control of, or acting on behalf of any person, entity, or country subject to such U.S. export controls.

#### 12.2 Taxes and Fees, Shipping Charges

License fees quoted to Licensee are exclusive of any and all taxes or fees including, but not limited to, sales tax, use tax, value-added tax (VAT), customs, duties, or tariffs, and shipping and handling charges.

#### 12.3 No Implied Waivers

The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

#### 12.4 Severability

The parties mutually agree that if any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make the intent of the language enforceable.

#### 12.5 Assignment

- a) Licensee shall not, without the prior written consent of MARSHALLGIS, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- b) MARSHALLGIS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

#### 12.6 Survival of Terms

The provisions of Articles 7, 8, 9, 10, and 11 of this Agreement shall survive the expiration or termination of this Agreement for any reason.

#### 12.7 Equitable Relief

Licensee agrees that any breach of this Agreement by Licensee may cause irreparable harm and that, in the event of such breach, in addition to any and all remedies at law, MarshallGIS shall have the right to seek an injunction, specific performance, or other equitable relief in any court of competent jurisdiction to prevent violation of these terms and without the requirement of posting a bond.

#### 12.8 Commercial Terms and Conditions

This Agreement contains MarshallGIS' commercial terms and conditions. Licensee's rights in the Services, Software and Documentation are strictly limited to the uses granted by this Agreement pursuant to FAR 12.211, FAR 12.212, and DFARS 227.7202. In the event any court, arbitrator, or board holds that the U.S. Government has greater rights to any portion of the Services, Software or Documentation, such rights shall extend only to the portion(s) affected and use, duplication, or disclosure by the U. S. Government is subject to restrictions as provided in FAR 52.227-19 (June 1987), FAR 52.227-14 (ALT III) (June 1987), DFARS 252.227-7015 (NOV 1995), or NFS

1852.227-86 (December 1987), as applicable. No other license terms or conditions shall apply unless expressly agreed in writing by MarshallGIS and Licensee.

#### 12.9 Governing Law, Arbitration

- a) Licensees in the United States of America, Its Possessions, and Territories This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without reference to conflict of laws principles. If Licensee is a U.S. Government agency, this Agreement is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-603), in lieu of the Arbitration provisions of this clause.
- b) All Other Licenses All disputes arising in connection with the present Agreement that cannot be settled through negotiation shall be finally settled under the Rules of the American Arbitration Association by one (1) arbitrator appointed in accordance with said Rules. The language of the arbitration shall be in English. The place of the arbitration shall be at a mutually agreed upon location. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Either party shall, at the request of the other, make available documents or witnesses relevant to the major aspects of the dispute.

#### 12.10 Entire Agreement

This Agreement constitutes the sole and entire agreement of the parties as to the subject matter set forth herein and supersedes any previous agreements, understandings, and arrangements between the parties relating to such subject matter. Any modification(s) or amendment(s) to this Agreement must be in writing and signed by an authorized representative of each party.

#### 12.11 Force Majeure

MARSHALLGIS shall have no liability to the Licensee under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of MARSHALLGIS or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of MARSHALLGIS or its sub-contractors, provided that the Licensee is notified of such an event and its expected duration.

#### 12.12 Attorney Fees

If any proceeding is brought concerning anything about this Agreement, the prevailing party may recover from the other all reasonable attorney fees and costs incurred in proceeding and in any appeal thereof, in addition to any other relief to which it may be entitled.



### **Exhibit B**

### of Master License Agreement

Software License Type and Scope of Use

The following software products are licensed as part of the MarshallGIS Master License Agreement. The license type and scope of use for each MarshallGIS Software or Services product identified below is described in the associated applicable footnote listed below.

ID	Subject	Product Name	License Type
KNXSW001	Server	GeoKNX® Server	а
KNXSW002	Server	GeoKNX® Server - GIS only	а
KNXSW010	Mobile	GeoKNX® Mobile	b
KNXSW011	Mobile	GeoKNX® Mobile (OEM)	b
KNXSW012	Mobile	GeoKNX® Mobile (OEM GDB)	b
KNXSW013	Mobile	GeoKNX® Mobile - GIS only	b
KNXSW014	Mobile	GeoKNX® Mobile (OEM) - GIS only	b
KNXSW015	Mobile	GeoKNX® Mobile (OEM GDB) - GIS only	b
KNXSW030	Spatial Administrator	GeoKNX® Spatial Administrator	b
KNXSW040	Sync	GeoKNX® Sync	<mark>b</mark>
GRSW072	Toolbox	GeoKNX® Toolbox	<mark>b</mark>
GRSW073	AddressLink	GeoKNX® AddressLink	b
LiGO-001	PaaS Services	LiGO®	С
LiGOV-001	Virtual Appliance PaaS Services	LiGO®-V	d
LiGOA-001	Web Services	LiGO®-Access	a

- <sup>a</sup> Licensed as a "server license" for each server. "Server license" means a license for the server Software that resides on a per computer server basis and provides services to multiple users in a global client /server distributed computing environment. Licensee is authorized to use the number of server licenses paid for under the recurring Software Maintenance and Services Delivery Agreement.
- <sup>b</sup> Licensed as a "single use license" for each end user that will use the Software or Documentation. "Single use license" means a license must be dedicated for each computer or network access point that has user rights for the Software or Documentation. Licensee is authorized is to the number of single use licenses paid for under the recurring Software Maintenance and Services Delivery Agreement.
- <sup>c</sup> Licensed as a "platform as a service license" or PaaS license for each server. "PaaS license" means a license to use the hosted Services and Documentation, data, connected telematics devices with data connectivity. Licensee is authorized to use the PaaS license for the number of connected devices that are paid for under the recurring Software Maintenance and Services Delivery Agreement. Licensee is authorized to have a limited number of users of the web and mobile applications that are part of the PaaS. The authorized number of web and mobile application users is up to one-half (1/2) of the number of connected devices.



# SERVICE & MAINTENANCE AGREEMENT (SMA)

This Service & Maintenance Agreement (hereinafter referred to as SMA) is made by and between Marshall and Associates, Inc., 2915 N. Cole Rd Boise, ID 83704 USA (hereinafter referred to as "MARSHALLGIS"), and purchaser of the MARSHALLGIS SMA, Austin Water Utility (hereinafter referred to as "Customer").

In Consideration of the mutual covenants of the parties hereto and subject to all terms and conditions of this SMA, outlined in Appendix A attached, MARSHALLGIS and Customer agree as follows:

This SMA applies to the product(s) licensed to Customer by MARSHALLGIS as agreed to in a separate Master License Agreement (MLA).

Customer agrees to pay to MARSHALLGIS in advance, an annual maintenance fee of \$2,900.00 for services provided in accordance with this SMA. The SMA fees are as follows:

The SMA fee is for the MLA and based on 20% of the original undiscounted total software cost, is levied in advance and is subject to annual increased of no more than 1.5%. Both the percentage and the total software cost are set according to MARSHALLGIS's price list at the date of purchase.

Product Description: GeoKNX Toolbox Support and Maintenance (Multi-Year: Five Year Agreement from 4/1/2019 to 3/30/2024), GeoKNX Sync Support and Maintenance (Multi-Year: Five Year Agreement from 4/1/2019 to 3/30/2024),

Product Release Number: TBD

Customer Purchase Order Number and Date:

Annual Maintenance Period: April 1st through March 31st

Annual Fee: \$2,900.00

Customer Point of Contact: Steve Hutton
Customer Email: Steve.Hutton@austintexas.gov

Customer Support Information (Help Desk): (208) 514-0411 x2; also, ask about our Support Portal Toll-Free Technical Telephone Support: M-F between 6 a.m. until 5 p.m. Pacific (87) 348-3601 Email Support Requests: <a href="mailto:support@marshallgis.com">support@marshallgis.com</a>

AUSTIN WATER UTILITY	MARSHALL AND ASSOCIATES, INC.
Signature:	Signature:
Name:	Name: Elizabeth Mashall
Title:	Title: Ounce / LEO
Date:	Date: 1/22/2019

Marshall and Associates, Inc.



### **City of Austin Purchasing Office**

### Sole Source Certificate of Exemption

DATE: 2/15/2019

**DEPT: Austin Water** 

TO:

Purchasing Officer or Designee

FROM: Steve Hutton

**PURCHASING POC:** 

PHONE: 512-972-0183

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions: Link to Local Government Code

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

☑ Items that are available from only one source because of patents, copyrights, secret process,
or natural monopolies.
☐ Films, manuscripts or books that are available from only one source.
☐ Gas, water and other utilities that are available from only one source.
☐ Captive replacement parts or components for equipment that are only available from one
source.
☐ Books, papers and other library materials for a public library that are available only from the
persons holding exclusive distribution rights to the materials.
☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo
or other facility to which the organization has provided significant financial or other benefits

Page 2 of 4

- 2. Describe this procurement including the following information as applicable:
  - What it is for and why it is needed? To renew the licensing, support, and maintenance for our GIS editing software and to develop new functionality for our data development work. The software is used for entering water, wastewater, reclaimed assets in the GIS and Infor Public Sector enterprise systems at Austin Water.
  - What is the municipal purpose that this procurement addresses or furthers? Providing location and mapping of water, wastewater, reclaimed infrastructure assets.
  - Why is the procurement a sole source? MarshallGIS has developed the only Esri-based GIS
    editing applications that allow users to edit the geodatabase in one environment and
    Hansen/IPS ready format to the Hansen/IPS database environment.
  - Has this procurement or a similar procurement been competitively solicited in the past? No.
  - Why is the vendor the only viable solution? The items are available from only one source.
  - Are there any other alternative solutions? No. If so, why are those alternatives unacceptable?
     N/A.
  - Is there a concern regarding warranty, compatibility, and/or routine safety? No.
  - Are there territorial or geographic restrictions for the product distribution and sale? No.
  - Are there other resellers, distributors, or dealers in the market? No.
  - What other suppliers or products/services were considered? N/A.
  - If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? N/A. What is value of buying the addition versus buying all new? N/A.
  - Is there a way to retrofit another brand? No. What is this estimated associated cost? N/A.
  - What specialized training or certifications are necessary to maintain or repair the equipment/item/system? N/A. Is it specific to the proposed vendor? N/A.
  - Prices were determined to be reasonable based on the following (select all that apply):

	Prices are the same or similar to current City contract.
	Notes: At a minimum, note the City of Austin contract number and title.
	Prices are the same or similar to current contract with another government.
	Notes: At a minimum, note the contract number, title and government
	that created the contract.
2.49	Prices are on a current and publicly available list price, for the same or similar
	products, available to all government and commercial customers.
	Notes: At a minimum, note the list price title, source of the list price
	(catalog and catalog publish date or web address and download date).
	Prices are established by law or regulation.
	Notes: At a minimum, note the legal or regulatory reference that
	established the prices.
$\boxtimes$	Other means of determining Price Reasonableness.
	Notes: Comparable IT industry pricing for software and professional services.

<sup>\*</sup> The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

3.	forward the completed and signed Certificate of Exemption to the Purchasing Office along with the ollowing documentation:  ☑ Scope of Work or Statement of Work or Vendor Proposal  ☑ Vendor's Quote  ☑ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed					
	payment schedule  ☑ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why					
4.	Based on the above facts and supporting documentation, the City of Austin has deemed this					
	procurement to be exempt from competitive procurement requirements pursuant to Texas Local					
	Government Code section 252.022(7) and will contract with:					
	(Vendor Name): Marshall and Associates, Inc. for					
	(Description of Procurement):Software licenses and services					
5.	Check the contract type (one-time or multi-term) and fill in the dollar amount and term as					
	applicable:					
	☐ This is a one-time request for \$					
	commended Stua V. Hutton 2/15/2019 rtification Originator Date					
Cei	rtification Originator Date					
	oroved JAA 2/25/2019 rtification Department Director or designee Date					
	Assistant City Manager / General Manager Date (procurements requiring Council approval)  The chasing Office Authorized Purchasing Office Staff Date					
	rchasing Office nagement Review Purchasing Officer or designee Date (procurements requiring Council approval)					



November 21, 2018

Steve Hutton
Austin Water & Wastewater Utility
625 E 10<sup>th</sup> St, Ste 103
Austin, TX. 78701-2612

Subject:

Sole Source Justification - MarshallGIS

#### Dear Steve,

- 1. MarshallGIS has been a unique partner with both Hansen and Esri and has worked since 2001 interfacing Esri technology directly with the Hansen technology
- 2. MarshallGIS originally developed, recently enhanced, and currently supports Infor's Esribased product, GeoAdministrator, which Austin has purchased.
- MarshallGIS has the only commercial off-the-shelf ArcGIS Engine-based mobile product that allows a field user to bring both GIS and Hansen data to the field and make updates using GPS and other peripherals in a wireless and/or disconnected environment.
- 4. MarshallGIS has developed the only Esri-based GIS editing applications that allow users to edit the geodatabase in one environment and propagate these changes in a "Hansen-ready" format to the Hansen database environment. MarshallGIS has used this technology, in part, in the GeoKNX Sync and GeoKNX Toolbox solution.
- 5. MarshallGIS provides the only ArcGIS-based desktop solution that works in a multi-user ArcSDE versioned environment, identifies changes, validates against Hansen, and pushes those changes into Hansen. MarshallGIS has worked closely with Infor to ensure that our data architecture will follow Hansen's data model.
- MarshallGIS has many large existing customer sites similar to Austin who are using GeoKNX
  Toolbox and GeoKNX Sync integrated with Hansen for mission-critical GIS and Hansen asset
  maintenance.
- MarshallGIS has many large existing customer sites similar to Austin who are using GeoKNX
  Mobile integrated with Hansen for mission-critical field operations with assets, work orders
  and service requests.

Sincerely

Flizabeth Marshal

Authorized Personnel / President and CEO